Since the present Act fails to provide for the extinction of such powers to collect after-acquired rights of action, that object seems not to have been entirely secured.

JUDICIAL RESTRICTIONS ON THE LEGISLATIVE POWER OF TAXATION. — It is well settled by the courts, both state and federal, that taxation must be for public purposes.[1] In some cases this conclusion is based on express or implied constitutional provisions.[2] But in a number of leading cases it is not so based.[3] It is there drawn from question-begging theories of the nature of legislation, from supposed implied reservations of private rights in the so-called social compact made at the establishment of government, and even from the common dictionary definition of taxation. These sources are clearly questionable. It seems, however, that the doctrine of these cases was established, not on account of its constitutional or logical necessity, but because it was very desirable and because the courts, being regarded as guardians of private rights even when not secured by constitutional provisions, were ready to declare unconstitutional statutes infringing such latent rights. In the assumption of such power the courts seem to have encroached on the functions of the legislature by defining without constitutional requirement the purposes for which it seems wise or politic to tax.

After establishing the public purposes of taxation, whether properly by force of a constitutional provision or improperly by encroaching on the powers of the legislature, courts further usurp legislative prerogatives by refusing to declare taxing acts public, the purposes of which do not fall within a restricted and artificial definition.[4] This usurpation affects all legislative taxing acts for purposes lying between the restricted definition and the reasonable and liberal definition which the legislature should be allowed to follow. To justify the courts in declaring a tax void, the absence of all possible public interest should be so clear that no reasonable man could consider it promotive of the public welfare.[5] If such taxation is unjust or excessive, the only security for correction is the legislative body.[6] Ultimately the responsibility will rest where it ought, — on the electors. This seems good politics and, moreover, respects our tripartite form of government.

A class of cases involving these principles are the decisions as to the constitutionality of state acts taxing insurance companies for the benefit of disabled firemen. When applying only to foreign insurance companies, such statutes have been sustained as police regulations.[7] But other cases have more correctly held that, as the revenue purpose is more important than the regulative, the imposition is a tax.[8] As a tax, it has been held invalid as offending not only against specific constitutional provisions, but against the

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[1] Cole *v.* La Grange, 113 U. S. 1.

[2] Lowell *v.* Boston, 111 Mass. 454, 461; Trustees *v.* Boone, 93 N. Y. 313.

[3] Loan Ass'n *v.* Topeka, 20 Wall. (U. S.) 655; Calder *v.* Bull, 3 Dall. (U. S.) 386, 387.

[4] See 12 HARV. L. REV. 499; Phila. Ass'n *v.* Wood, 39 Pa. St. 73.

[5] City of Minneapolis *v.* Janney, 86 Minn. 111; Broadhead *v.* Milwaukee, 19 Wis. 624.

[6] See Bank *v.* Billings, 4 Pet. (U. S.) 514, 563.

[7] Trustees *v.* Boone, *supra*; Fire Dept. *v.* Helfenstein, 16 Wis. 136.

[8] See Phœnix Assurance Co. *v.* Fire Dept., 117 Ala. 631; San Francisco *v.* Ins. Co., 74 Cal. 113; State *v.* Merch. Ins. Co., 12 La. Ann. 802; Firemen's Benev. Ass'n *v.* Lounsbury, 21 Ill. 511; Henderson *v.* London, etc., Co., 135 Ind. 23; State *v.* Wheeler, 33 Neb. 563.

latent rights and reservations above mentioned.[9] On the other hand, it has been held valid, as well under the most liberal conception of the legislative power of taxation as under the requirement of public purposes.[10] A recent South Carolina case regards such a tax as not for public purposes and consequently invalid. *Aetna Fire Insurance Co.* v. *Jones*, 59 S. E. 148. Had the court followed the Alabama case,[11] which it misconceived and which seems the most satisfactory case on this subject, the statute would have been considered within the powers of the legislature. For it is clear that there is the possibility that such a tax promotes the public welfare. It is not, therefore, a question of right for the courts, but a question of policy for the legislature.

INEFFECTUAL CHANGE OF THE BENEFICIARIES OF MUTUAL BENEFIT CERTIFICATES. — Upon the death of a member of a mutual benefit association who has made an ineffectual change of beneficiaries, the problem is presented whether the proceeds should be paid to the original beneficiary or to the persons designated by the society's rules or by statute to receive them if no beneficiary is named. The attempted change may be ineffectual because the second beneficiary is incapable of taking by the rules of the society or by statute, or because of failure to comply with the prescribed formalities. It should be noted that compliance with the formalities is not always necessary for an effectual change; for before the member's death the society can waive such compliance and complete the change, and the original beneficiary cannot object, since, unlike the beneficiary of an ordinary insurance policy, his rights vest only on the member's death.[1] If, however, the change is ineffectual for any reason, the important question then is, whether or not the act done operated as a revocation of the original designation. If the change attempted was in the nature of an assignment or one which, if ineffectual, leaves the original obligation payable on its face to the first beneficiary, the general rule is that he may recover.[2] There may, however, be grounds for equitable interference. If the cause of the invalidity of the change is attributable to the first beneficiary, he will not be allowed to profit by his own wrong, and the proceeds will be paid as though the change had been accomplished. The same result may be reached if the insured did all in his power to make the change but was prevented by death or because the conditions were impossible of performance.[3] Unless some such exceptional case exists, the fact that the original designation has never been properly revoked will protect the first beneficiary.

If, however, there has been a sufficient revocation of the original designation, the rights of the first beneficiary are completely destroyed. A contrary result, it is true, has been reached in several cases which hold that although the original certificate was surrendered and a new one issued, as the second

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[9] Phila. Ass'n *v.* Wood, *supra*; San Francisco *v.* Ins. Co., *supra*; State *v.* Wheeler, *supra*.

[10] Firemen's Benev. Ass'n *v.* Lounsbury, *supra*; Phœnix Assurance Co. *v.* Fire Dept., *supra*.

[11] Phœnix Assurance Co. *v.* Fire Dept., *supra*.

[1] Titsworth *v.* Titsworth, 40 Kan. 571. *Cf.* McLaughlin *v.* McLaughlin, 104 Cal. 171.

[2] Elsey *v.* Odd Fellows', etc., Ass'n, 142 Mass. 224.

[3] Grand Lodge *v.* Child, 70 Mich. 163. See 16 HARV. L. REV. 67.